

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

CHRISTOPHER LYONS,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR PIERCE COUNTY

BRIEF OF APPELLANT

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A. SUMMARY OF ARGUMENT

The trial court denied Christopher Lyons the opportunity to present an expert witness at his involuntary medication hearing, in contravention of *Sell v. United States*.¹ Although the State provided no notice to the defense about what it expected to elicit from its own expert at the hearing and Mr. Lyons immediately sought to have a defense expert testify, the trial court denied Mr. Lyons' motion because it determined it was bound to follow the State's expert's conclusions regardless of the evidence Mr. Lyons presented. The court's erroneous ruling violated Mr. Lyons' right to due process, and reversal is required.

B. ASSIGNMENTS OF ERROR

1. The trial court violated Mr. Lyons' right to due process when it prevented him from offering an expert witness in his defense.

2. Mr. Lyons' right to due process was violated when the trial court authorized the hospital to medicate him against his will in the absence of evidence satisfying the *Sell* factors.

¹ 539 U.S. 166, 123 S.Ct. 2174, 156 L.Ed.2d 197 (2003).

3. The trial court's order must be vacated because it failed to provide the required limitations on the medications to be administered and the dosages permitted.

4. The trial court's order finding that the State met its burden by clear, cogent, and convincing evidence, and authorizing Mr. Lyons to be medicated against his will, was entered in error. CP 101.

5. To the extent they may be considered findings of fact, the trial court erred when it entered 1(a)-1(c) in its order. CP 101.

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Individuals have a constitutionally protected liberty interest in freedom from being medicated against their will. An order to forcibly medicate a defendant should be issued in a rare circumstance, and is constitutionally permissible only where the defendant has had an opportunity to develop a complete and reliable record. Where the State provided no notice of what its expert would testify to at the involuntary medication hearing, and the trial court prevented Mr. Lyons from presenting an expert to rebut the State's assertions, did the trial court violate Mr. Lyons' right to due process under *Sell*?

2. In order to meet its burden at an involuntary medication hearing, the State must satisfy four factors under *Sell*. Where the

evidence showed that (1) the State's interest was lessened because Mr. Lyons was subject to civil commitment if his delusions continued, (2) the chance of success with medications was low and the medications were likely to cause side effects, and (3) forcibly medicating Mr. Lyons was not medically appropriate, did the trial court err when it authorized the hospital to medicate Mr. Lyons against his will?

3. A court's order authorizing forcible medication must limit the hospital's discretion. Where the order permitted the hospital to administer all nine medications the State's expert suggested could be used to treat Mr. Lyons' delusions, and set no maximum dosages other than those required by the Food and Drug Administration, must the order be vacated?

D. STATEMENT OF THE CASE

The State charged Christopher Lyons with two counts of second degree assault, but he was found incompetent to stand trial. CP 1-2, 13. On July 23, 2014, the court committed Mr. Lyons to Western State Hospital (WSH) for 90 days in an attempt to restore his competency. CP 20. In the evaluation finding Mr. Lyons incompetent, the psychologist recommended he be medicated against his will, if necessary, but the State did not pursue a hearing on this issue. CP 13.

In September, Mr. Lyons still had not been transported from the jail to WSH, and he was not evaluated again as to his ability to stand trial on the assault charges until December 18, 2014. CP 48, 62. That evaluation once again suggested the State seek authorization to forcibly medicate Mr. Lyons, but the State did not act on this suggestion until a letter from WSH issued on January 20, 2015, which stated that unless a hearing for involuntary medication was held within the next seven days, Mr. Lyons would be returned to the jail. CP 82.

The only notice the State provided to Mr. Lyons was the letter from WSH. RP 5. By the time of the hearing, on January 28, 2015, Mr. Lyons had been held for approximately 120 days at WSH. RP 5. The State provided no information to Mr. Lyons about what medication the psychiatrist recommended, at what dosage, or how long the treatment would last. RP 5. Defense counsel explained to the court that without information about what the State was seeking, she had no ability to consult with an expert in preparation for the hearing. RP 9. She had also been forced to subpoena her client's records directly from WSH, because the State did not feel it was obligated to provide discovery from a "third party." RP 8, 10.

The court considered granting defense counsel a continuance, but decided against it after the deputy prosecutor complained that he was very busy and a significant portion of the restoration time period had already elapsed. RP 12. The court agreed that time was of the essence because it too was very busy, and had a trial beginning shortly. RP 12. Rather than give defense counsel additional time to prepare for the hearing, the court decided the hearing would proceed and that after Mr. Lyons cross-examined the State's witness, they could "see where we're at." RP 12.

A psychiatrist at WSH, Sukhinder Aulakh, testified for the State. RP 14. Dr. Aulakh testified Mr. Lyons presented with delusional disorder and they had prescribed a number of different medications to address his delusions, including Abilify, Zyprexa, Trileptal, and Thorazine. RP 23, 28, 31, 38, 94. In each instance, Mr. Lyons discontinued the medication due to unpleasant side effects. RP 25, 30, 33. There were many more medications Mr. Lyons could try, but he had refused. RP 39-41. Dr. Aulakh testified he did not know what medications Mr. Lyons had used in the past because he had not ordered the records from Mr. Lyons' prior medical provider. RP 62, 90. He acknowledged this was a poor decision in hindsight. RP 91.

Defense counsel brought one particular study to Dr. Aulakh's attention, regarding the restoration success rate of individuals with delusional disorder, but he testified he was not familiar with that study or any other specific research related to the efficacy of medication on delusional disorders. RP 94. He did recall that delusions were harder to treat than other psychiatric issues and that one third of the time individuals with delusional disorder have no response to treatment at all. RP 94-95. Dr. Aulakh's testimony was spread over two days because the psychologist the State intended to call as its second witness was unavailable. RP 75.

After cross-examination on the second day, defense counsel represented that she had consulted with multiple experts that morning and identified two individuals who could address the concerns raised in the study she had cited in her examination of Dr. Aulakh. RP 103. This study indicated that even where competency could be restored in individuals with delusional disorder, it typically took three to four months to occur. RP 103. This was important because Mr. Lyons did not have three months remaining in his restoration period. RP 103.

Despite having initially indicated it would be appropriate to reevaluate whether Mr. Lyons needed additional time to prepare his

defense after the State presented its case, the trial court immediately resisted Mr. Lyons' request for additional time to present an expert in his defense. RP 104. It quickly determined it would be of no use, given that the State had presented an expert and it would be up to the court to determine which expert was more credible. RP 105-06. Finding the State's expert had testified "credibly," the trial court denied Mr. Lyons' motion for additional time to consult with an expert and present testimony in his defense. RP 112-13. Instead, it agreed to review the journal article to which Mr. Lyons referred during cross-examination. RP 113.

Several days later, the parties appeared for the court's decision. RP 115. The court found the article Mr. Lyons relied upon supported the State's argument because it suggested antipsychotic drugs can be helpful to restoring the competency of individuals with delusional disorder. RP 118. Defense counsel pointed out the results of the study also indicated it takes three to four months under a successful regimen to possibly see positive results, which was more time than the State currently had left in Mr. Lyons' case. RP 122.

The defense renewed its request for an expert, and defense counsel explained she had secured a psychologist who works in the

Special Commitment Center and with individuals committed under the Involuntary Treatment Act. RP 127. She provided the expert's name and explained he had an opinion both on how long it takes to restore individuals with delusional disorder and on Mr. Lyons' case specifically. RP 127.

The trial court rejected this proffer, citing the fact that defense counsel had not provided this information before. RP 127. It informed Mr. Lyons he was free to file a motion for reconsideration. RP 127.

The court authorized WSH to medicate Mr. Lyons against his will. RP 120; CP 100. Mr. Lyons' competency was not restored and the criminal charges were dismissed, without prejudice, at the end of the allowed restoration period. CP 122. However, Mr. Lyons was immediately committed to WSH to be evaluated for an involuntary commitment petition. CP 124.

Mr. Lyons sought discretionary review, which the Commissioner granted. Ruling Denying State's Mot. to Dismiss Mot. for Dis. Rev. and Granting Rev. at 17. Although Mr. Lyons is no longer subject to the trial court's order, the Commissioner found the case involved a matter of continuing and substantial public interest.

Ruling Denying State's Mot. to Dismiss Mot. for Dis. Rev. and Granting Rev. at 8.

E. ARGUMENT

1. When the trial court denied Mr. Lyons the opportunity to present his defense and develop a complete and reliable record, it violated his due process rights under *Sell v. United States*.

- a. *Sell* orders are disfavored and may be issued only after both sides have had an opportunity to develop a complete and reliable record.

An individual has a constitutionally protected liberty interest in freedom from unwanted antipsychotic drugs. *Washington v. Harper*, 494 U.S. 210, 221-22, 110 S.Ct. 1028, 108 L.Ed.2d 178 (1990); *Riggins v. Nevada*, 504 U.S. 127, 134, 112 S.Ct. 1810, 118 L.Ed.2d 479 (1992); *Sell v. United States*, 539 U.S. 166, 179, 123 S.Ct. 2174, 156 L.Ed.2d 197 (2003); U.S. Const. amend. XIV; Const. art. I, § 3. “The involuntary injection of such drugs represents an interference with a person’s right to privacy, right to produce ideas, and ultimately the right to a fair trial.” *State v. Hernandez-Ramirez*, 129 Wn. App. 504, 510, 119 P.3d 880 (2005) (citing *Riggins*, 504 U.S. at 134). In *Harper*, *Riggins*, and *Sell*, the United States Supreme Court demonstrated its “reluctance to permit involuntary medication except in rare

circumstances.” *United States v. Rivera-Guerrero*, 426 F.3d 1130, 1138 (9th Cir. 2005).

The State may seek to involuntarily administer antipsychotic drugs to a defendant when he faces serious criminal charges but is incompetent to stand trial. *Sell*, 539 U.S. at 179. However, such drastic measures are only permissible where the State shows: (1) important State interests are at stake; (2) involuntary medication will significantly further those State interests; (3) involuntary medication is necessary to further those interests; and (4) administration of the drugs is medically appropriate. *Id.* at 180-81. The State bears the burden of proving each of these factors by clear, cogent, and convincing evidence. *Hernandez-Ramirez*, 129 Wn. App. at 510; RCW 71.05.217(7)(a).

The *Sell* analysis differs from the analysis employed when the State seeks to forcibly medicate an individual to address a dangerousness concern.² *Id.* at 183; *Hernandez-Ramirez*, 129 Wn. App. at 510. When the only purpose behind the involuntary medication is to allow a defendant to stand trial, the trial court must consider the

² The psychiatrist who testified at Mr. Lyons’ hearing suggested he *could* be a danger to others, because he was afraid of his neighbors and believed they wanted to take his property. RP 49. However, the court applied the *Sell* factors and made no findings as to dangerousness. CP 101.

facts of the case and any possible side effects of the medication as part of its *Sell* analysis. *Sell*, 539 U.S. at 185-86. Such considerations must be made keeping in mind that *Sell* orders are disfavored. *Rivera-Guerrero*, 426 F.3d at 1137.

For example, if the defendant's failure to voluntarily take medication will result in a lengthy confinement, the State's interest is lessened. *Sell*, 539 U.S. at 180. In addition, because the State has an interest in ensuring a fair trial, the side effects of any medication are relevant in the trial court's determination. The court must consider "[w]hether a particular drug will tend to sedate a defendant, interfere with communication with counsel, prevent rapid reaction to trial developments, or diminish the ability to express emotions." *Id.* at 185. Where side effects will significantly interfere with the defendant's ability to assist his defense counsel, the State cannot show its interests are furthered through forcible medication. *Id.*

Given these important considerations, a trial court must take seriously its obligation to ensure the record has been developed accurately and completely before issuing such an order. As the Ninth Circuit held:

[I]n light of the importance of judicial balancing, and the implication of deep-rooted constitutional rights, a court

that is asked to approve involuntary medication must be provided with a complete and reliable medically-informed record, based in part on independent medical evaluations, before it can reach a constitutionally balanced *Sell* determination.

Rivera-Guerrero, 426 F.3d at 1137 (citing *United States v. Williams*, 356 F.3d 1045 (9th Cir. 2004)). An order should be “issued only after both sides have had a fair opportunity to present their case and develop a complete and reliable record.” *Id.* at 1138.

- b. The trial court denied Mr. Lyons a fair opportunity to present his defense in violation of *Sell*.

Prior to Mr. Lyons’ involuntary medication hearing, the State provided him with a form letter requesting “a hearing be held to address the issue of involuntary medication.” CP 82. No petition was filed. RP 5. At the start of the hearing, defense counsel informed the court she was unprepared to proceed because all she had received from the State was the form letter. RP 5. With such little information, she had no ability to consult with experts in anticipation of the hearing. RP 8. In addition, because the State believed it had no obligation to provide them in discovery, she was forced to obtain Mr. Lyons’ medical records from WSH by subpoena. RP 8-10. Defense counsel noted that she had only just received over 300 pages of medical records and had not had time to review all of them. RP 10. Despite defense

counsel's representations, the trial court ordered the hearing to proceed, telling the parties, "let's move forward and see where we're at." RP 13.

After the State presented its expert witness, the defense explained it wished to call its own expert in order to challenge and rebut the State's assertions. RP 102. The trial court denied this request. RP 113. In rejecting Mr. Lyons' request for time to secure an expert witness, the trial court failed to appreciate its obligations under *Sell*.

The trial court interpreted the *Sell* factors as "fairly rigid criteria" designed to favor the issuance of an involuntary medication order in most circumstances. RP 104. In its exchange with defense counsel, the court repeatedly questioned how a defense expert could be of any use:

THE COURT: I'm sorry, let me ask you this question, what would he say about your client as a patient?

MS. MARTIN: My expert?

THE COURT: Um-hmm.

MS. MARTIN: Well, I would provide them with all the evaluations, they could meet with Mr. Lyons, they would proffer an opinion as to –

THE COURT: Now, this is very important, do you know they would do that or is the scope of your conversation with them as to the nature of delusions and their amenability to treatment with these various pharmaceuticals?

MS. MARTIN: Well, I've consulted with Dr. McClung (phonetic) and he indicated he's willing to work with me on this case and talk to Mr. Lyons and offer insight and opinion into that.

THE COURT: With a view towards what goal? What is the goal here? And tell me how you juxtapose that with the fairly rigid criteria I'm compelled to follow under *United States v. Sell* [sic].

RP 104.

This exchange continued, with the trial court insisting on knowing what, precisely, the defense was attempting to achieve by bringing in its own expert. RP 105. When defense counsel explained she was trying to prevent Mr. Lyons from being medicated against his will, the trial court implied that any testimony from a defense expert would be a waste of time, stating, "You would accept the proposition that were these doctors to testify, it would still be up to me to decide that [sic] which I find most credible?" RP 105-06.

When explaining its decision to deny Mr. Lyons' request to present expert testimony, the trial court came back to this point, and once again relied on *Sell*, to find:

The precise testimony of the expert to which he would testify is unknown. And at that, assuming that there could be a foundation established for their opinion as it related to this particular patient, it would continue to go to weight as to admissibility and it would still be the subject of the weight that I attach, and yet, still, it would be subject to the fairly narrow criteria of *United States v. Sells* [sic].

And I think an important point here is this, I'm not, as we often encounter in civil litigation, being asked to decide a factual question. I am, instead, being asked to decide whether as a matter of law the State has presented clear, cogent, and convincing evidence as it relates to the criteria which I will go into in greater detail in a moment. At the end of the day, I'm still vested the [sic] responsibility with applying the criteria.

Now, I think implicit in this is that psychiatry is not a precise discipline. Over the course of the last 35 years, I have seen in a host of contexts healthcare providers, including psychiatrists, disagree with one another. I think it is safe to say that at least in the realm of civil litigation, I have rarely seen physicians agree with one another, particularly psychiatrists.

RP 109-10.

The trial court's analysis – that *Sell*'s narrow criteria prevented the court from denying the State's request as long as the State provided credible expert testimony – fails to appreciate both the State's burden at a *Sell* hearing and the significant, constitutional interest at stake for the individual. *Sell*, 539 U.S. at 180; *Rivera-Guerrero*, 426 F.3d at 1137. The *Sell* criteria are not simply boxes to be checked by the State based

on conclusory expert testimony. Instead, the court must seriously consider whether the State has “shown a need for... treatment sufficiently important to overcome the individual’s protected interest in refusing it,” taking into account “the efficacy, the side effects, the possible alternatives, and the medical appropriateness of a particular course of antipsychotic drug treatment.” *Sell*, 539 U.S. at 183.

Both the Ninth Circuit and this Court have reversed where a trial court denied a defendant’s motion to continue in order to present expert testimony. In *Rivera-Guerrero*, the Ninth Circuit reversed an involuntary medication order where a lower court had declined a defendant’s request for a continuance of the hearing to consult with an expert. 426 F.3d at 1143. In finding the court’s ruling was made in error, it stated:

The Supreme Court’s refusal to permit involuntary medication except in highly-specific factual and medical circumstances illustrates the importance of a complete factual and medical record upon which a judge can base his decision. Recognizing what is at stake, we must be vigilant in our review of procedural rulings that deny the defendant an opportunity to challenge the government’s case.

426 F.3d at 1136. Just as in *Rivera-Guerrero*, when the trial court rejected Mr. Lyon’s request for time to consult with an expert and

present expert testimony at the hearing, it denied Mr. Lyons the opportunity to challenge the State's case.

Similarly, in *In re Det. of Schuoler*, this Court found the trial court abused its discretion when it denied a continuance request in a pre-*Sell* case. 106 Wn.2d 500, 513, 723 P.2d 1103 (1986). In *Schuoler*, the State sought authorization to administer electroconvulsive therapy against an individual's will. 106 Wn.2d at 502. The trial court denied defense counsel's request for a continuance to adequately prepare, and at the hearing, two psychiatrists testified in support of the State. *Id.* This Court reversed, finding the trial court abused its discretion because due process protections were meaningless where there was "no assurance that the court heard Schuoler's side of the issues." *Id.* at 512.

Just as in *Schuoler* and *Rivera-Guerrero*, the trial court's denial of Mr. Lyons' request for a continuance to present expert testimony was error. In direct contravention of *Sell*, the ruling denied Mr. Lyons "a fair opportunity to present [his] case and develop a complete and reliable record." *Rivera-Guerrero*, 426 F.3d at 1138.

c. Reversal is required.

When the trial court's denial of a continuance prejudices a defendant, reversal is required. *State v. Deskins*, 180 Wn.2d 68, 82, 322 P.3d 780 (2014). In *Rivera-Guerrero*, the court found the harm to the defendant undeniable for two reasons. First, the denial of the continuance allowed the individual to be forcibly medicated based solely on "evidence offered by the very doctors who requested his involuntary medication in the first place." 426 F.3d at 1142. Here, Dr. Aulakh both signed the form letter requesting the hearing and was the sole witness at the hearing. CP 82, RP 14.

Second, the defendant is prejudiced because the court's ruling makes "it impossible for a medically-informed record to be developed in the proceeding." *Rivera-Guerrero*, 426 F.3d at 1142. Without such a record, the trial court cannot properly weigh the defendant's constitutional right against the State's interests. *Id.* at 1143. In this case, not only was the record insufficient, but the trial court appeared to feel it was bound to accept whatever the State's expert offered, without providing the defense with an opportunity to respond. This is the antithesis of what is required by *Sell*, 539 U.S. at 179. This Court should reverse the trial court's order.

2. Reversal of the trial court's order authorizing involuntary medication is required because the State did not satisfy the *Sell* factors.

As discussed above, before a court may order a defendant medicated against his will, the State must satisfy the four *Sell* factors, by clear, cogent, and convincing evidence. *Sell*, 539 U.S. at 180-81; *Hernandez-Ramirez*, 129 Wn. App. at 510-11; U.S. Const. amend. XIV; Const. art. I, § 3. At Mr. Lyons' hearing, the State failed to prove three of these factors: (1) that important State interests were at stake; (2) that the medication was substantially likely to render Mr. Lyons competent to stand trial and (3) that forcibly medicating Mr. Lyons was medically appropriate. The trial court's finding to the contrary, and order to medicate Mr. Lyons against his will, was error. CP 101.

- a. The State's interest was lessened by the fact that Mr. Lyons was subject to commitment under RCW 71.05.

Mr. Lyons was charged with two class B felonies and, at the time of the hearing, committed for a second 90-day restoration period. CP 1-2, 70. While the State had an interest in bringing him to trial, that interest was significantly lessened by the fact that, when the charges were dismissed without prejudice at the end of the second restoration period, the court was required to involuntarily commit Mr. Lyons to WSH under RCW 71.05. *Sell*, 539 U.S. at 180; RCW 10.77.088(4).

Indeed, after Mr. Lyons failed to regain competency after being forcibly medicated, this is exactly what happened. CP 124.

While the initial commitment period is temporary, and designed simply to allow an evaluation to be conducted, Mr. Lyons was subject to a significant period of confinement at WSH following his evaluation. The statute permitted Mr. Lyons be held for up to 180 days, and this period of confinement is subject to renewal. RCW 71.05.280(3); RCW 71.05.320(2).

Where a defendant's failure to take antipsychotic drugs voluntarily may result in a lengthy confinement for his mental illness, this diminishes "the risks that ordinarily attach to freeing without punishment one who has committed a serious crime." *Sell*, 539 U.S. at 180. Given that Mr. Lyons would be subject to confinement if he continued to suffer from delusions, the State did not show its interest was strong enough to override Mr. Lyons' liberty interest. *Riggins*, 504 U.S. at 127 (explaining that forced medication is "impermissible absent a finding of overriding justification").

- b. The State did not prove forced medication was substantially likely to render Mr. Lyons competent to stand trial.

In order to satisfy the second *Sell* factor, the State must show both that the medication is substantially likely to render the defendant competent to stand trial and substantially unlikely to have side effects that will significantly interfere with the defendant's ability to assist in his defense. *Sell*, 539 U.S. at 181. The State did not prove this in Mr. Lyons' case.

Dr. Aulakh testified that delusional disorders were more difficult to treat than other types of psychosis, and that Mr. Lyons only had a forty percent chance of responding to treatment. RP 94-95. He admitted that about thirty-three percent of patients respond only partially to treatment, and thirty-three percent have no response at all. RP 95.

While this Court has not addressed what percentile satisfies "substantially likely," other courts have suggested it is greater than forty percent. *See United States v. Green*, 532 F.3d 538, 553 (6th Cir. 2008) (relying on a ninety percent success rate); *United States v. Gomes*, 387 F.3d 157, 161 (2nd Cir. 2004) (relying on a seventy percent success rate); *United States v. Cruz-Martinez*, 436 F.Supp.2d 1157,

1160 (S.D. Cal. 2006) (noting that an eighty percent success rate met this requirement but a fifty percent success rate did not).

In addition, most of the medications Mr. Lyons tried had unpleasant side effects, including restlessness, involuntary twitching and cloudiness. RP 25, 30, 33. Dr. Aulakh could offer no assurances that the medications the hospital had not yet tried would be any different. RP 64. In fact, he acknowledged the medications he hoped to try could have a sedating effect. RP 67.

The State cannot meet its burden through the presentation of generalized evidence, as this “would effectively allow it to prevail in every case involving the same condition or course of treatment.” *United States v. Watson*, 793 F.3d 416, 425 (4th Cir. 2015). There was nothing about Mr. Lyons’ illness, specifically, that Dr. Aulakh testified made it more likely he would be successful under a particular course of treatment. Instead, the doctor testified he would offer all possible drug options to Mr. Lyons and allow him to choose. RP 43. This testimony did not satisfy the second *Sell* factor.

c. The State did not prove involuntary medication was medically appropriate.

In addition, the State did not demonstrate that forcibly medicating Mr. Lyons was medically appropriate. This factor seeks to

ensure that involuntarily medicating the defendant is in his “best medical interest in light of his medical condition.” *Sell*, 539 U.S. at 181.

Mr. Lyons had been held for approximately 120 days at the time of the hearing, and the hospital’s various attempts with different medications had offered no results. RP 23, 28, 31, 38. The evidence did not demonstrate that continuing to attempt to medicate Mr. Lyons, with no evidence to suggest that a different medication would produce a more positive result, was in his best medical interest. Indeed, the fact that he continued to suffer side effects with no change in his delusions suggested it was in his best medical interest not to forcibly medicate him.

Because the State failed to meet three of the four *Sell* factors, this court should reverse the trial court’s order. *Sell*, 539 U.S. at 186.

3. The court’s order does not satisfy *Sell*.

When the trial court issued its written order, it failed to adequately limit the hospital’s discretion. CP 101 at 1(a)-(b). In *United States v. Hernandez-Vasquez*, the Ninth Circuit held that *Sell* requires an order authorizing forcible medication to identify, at minimum:

(1) the specific medication or range of medications that the treating physicians are permitted to use in their treatment of the defendant, (2) the maximum dosages that may be administered, and (3) the duration of the time that involuntary treatment of the defendant may continue before the treating physicians are required to report back to the court on the defendant's mental condition and progress.

513 F.3d 908, 916-17 (9th Cir. 2007).

The trial court indicated its intention to comply with *Hernandez-Vasquez*, but then constructed an order that effectively eliminated its requirements. RP 121, 124. It ordered simply that WSH could forcibly medicate Mr. Lyons with any of the nine possible medications Dr. Aulakh had mentioned at the hearing and that the dosage for each should be capped by the maximum permitted by the Food and Drug Administration. RP 124; CP 101 at 1(a)-(b).

While *Hernandez-Vasquez* permits the court to allow for a range of medications, allowing all medications typically used to treat the illness at issue does not comport with the intent behind this restriction, which is to prevent physicians from exercising “unlimited discretion in their efforts to restore a defendant to competency for trial.” 513 F.3d at 916. Similarly, capping the dosage at the amount permitted by the regulatory agency effectively provides the hospital with the same unfettered discretion it would have without the order.

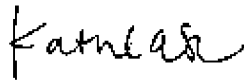
When a court's order does not meaningfully limit the discretion delegated to the hospital, it violates *Sell*. *Id.* at 917. Because the trial court failed to adequately circumscribe the hospital's discretion in how to put the involuntary medication order into effect, the order must be vacated.

F. CONCLUSION

Mr. Lyons respectfully requests this Court reverse the trial court's order authorizing involuntary medication, as the trial court's denial of Mr. Lyons' request to present an expert violated his right to due process. The Court should also reverse because the State failed to satisfy the *Sell* factors when it presented its case. Finally, the order should be vacated because it did not properly limit the hospital discretion in effecting the order.

DATED this 28th day of March, 2016.

Respectfully submitted,



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Washington Appellate Project (91052)
Attorneys for Appellant

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO**

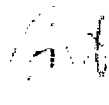
STATE OF WASHINGTON,)	
)	
Respondent,)	
)	
v.)	NO. 47231-7-II
)	
CHRISTOPHER LYONS,)	
)	
Appellant.)	

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